

United States  
16  
Circuit Court of Appeals

For the Ninth Circuit.

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G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Appellants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
and WOLFF KIRCHMANN & CO., a Cor-  
poration,

Appellees.

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**Apostles on Appeal.**

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Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
First Division.

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FILED  
OCT 14 1921  
F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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G. H. ATKINS, CLIFTON H. KROLL, DAVID  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the District Court of  
the United States for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL, and  
DAVID ATKINS,

Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

WOLFF, KIRCHMANN & CO., a Corporation,  
Garnishee.

**Praeceptum for Apostles on Appeal.**

To the Clerk of the United States District Court for  
the Northern District of California:

Please prepare the apostles on appeal of the  
above-entitled action, to contain the following:

1. Statement.
2. Libel.
3. Citation *in personam* with return (issued Apr. 24, 1919).
4. Citation with clause of foreign attachment (issued April 24, 1919, filed Jan. 30, 1920).
5. Return of garnishee, Wolff, Kirchmann & Co., Inc., dated May 22, 1919; filed Jan. 30/20).
6. Amendment to statement of Wolff, Kirchmann & Co., Inc. (filed July 14/19).
7. Stipulation *re facts* of American Trading Company attachment.

8. Opinion and order granting motion to vacate American Trading Co. Attachment.
9. Notice of motion to vacate attachment (filed June 3, 1921). [1\*]
10. Motion to vacate attachment (filed June 3, 1921).
11. Affidavit of Alfred E. Wolff (filed June 3, 1921).
12. Minute entry of order of July 2, 1921, granting motion to vacate attachment.
13. Notice of appeal (Wolff Kirchmann & Co., garnishee).
14. Assignment of errors (Wolff Kirchmann & Co., garnishee).
15. Stipulation *re* death of party.
16. Praecipe.

ANDROS & HENGSTLER,  
LEWIS T. HENGSTLER,  
F. W. DORR,

Proctors for Libelants. [2]

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\*Page-number appearing at foot of page of original certified Apostles on Appeal.



In the Southern Division of the District Court of  
the United States for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL, and  
DAVID ATKINS,

Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

WOLFF, KIRCHMANN & CO., a Corporation,  
Garnishee.

**Stipulation Re Apostles on Appeal.**

IT IS HEREBY STIPULATED that the  
apostles on appeal to the United States Circuit  
Court of Appeals for the Ninth Circuit from the  
order entered in the above-entitled action on July 2,  
1921, vacating the attachment against Wolff Kirch-  
mann & Co., a corporation, garnishee, may include  
the papers and records set forth in the praecipe at-  
tached hereto, and that all other papers and records  
in said action may be omitted from said apostles on  
appeal.

Dated: August 12, 1921.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,  
F. W. DORR,

Proctors for Libelants.

WILLIAM DENMAN,  
Proctors for Respondent and Garnishee.

[Endorsed]: Filed Aug. 12, 1921. W. B. Maling,  
Clerk. By C. M. Taylor, Deputy Clerk. [3]

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In the Southern Division of the District Court of  
the United States for the Northern District of  
California, First Division.

No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,

vs.

W. R. CARPENTER & COMPANY, LTD., a Cor-  
poration,  
Respondent.

**Statement of Clerk U. S. District Court.**

**PARTIES.**

Libelants: G. H. ATKINS, CLIFTON H. KROLL,  
DAVID ATKINS and DAVID GOODALE.

(David Goodale, deceased since filing of Libel.)

Respondent: W. R. CARPENTER & COMPANY,  
LTD., a Corporation.

Garnishees: WOLFF, KIRCHMANN & COM-  
PANY, a Corporation, and AMERICAN  
TRADING COMPANY, a Corporation. [4]

**PROCTORS.**

For Libelants: Messrs. ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER, Esq., and F. W.  
DORR, Esq., San Francisco, Cal.

For Respondent and Garnishee, Wolff Kirchmann Co.: WILLIAM DENMAN, Esq., San Francisco, Cal.

For Garnishee, American Trading Company: SAMUEL KNIGHT, Esq., and F. ELDRED BOLAND, Esq., San Francisco, Calif.

PROCEEDINGS.

1919.

April 24. Filed libel for breach of contract with prayer for writ of foreign attachment and order allowing same.

Issued citation directed to respondent, which was afterwards filed on return, with the following return of U. S. Marshal endorsed thereon:

“I hereby certify and return, that on the 24th day of April, 1919, I received the attached Citation and that after diligent search, I am unable to find the within named respondent, W. R. Carpenter & Co., Ltd., a corporation, within my district.

J. B. HOLOHAN,  
United States Marshal,  
By Harold Maguire,  
Deputy United States Marshal.”

[5]

April 24. Issued citation and writ of foreign attachment, which was filed on re-

turn January 30, 1920, with the following returns of U. S. Marshal endorsed thereon:

“I hereby certify and return that I received the attached citation, with order for foreign attachment, at San Francisco, California, on April 24, 1919, and after due and diligent inquiry made, I am unable to find the respondent, W. R. Carpenter & Co., Ltd., a corporation, or any goods and chattels of said respondent, within my district.

I further return that at San Francisco within the said Northern District of California, on the 25th day of April, 1919, I attached all the credits and effects of W. R. Carpenter & Co., Ltd., a corporation, not to exceed the sum of \$94,360.00, due or owing to W. R. Carpenter & Co., Ltd., a corporation, in the hands or under the control of Wolff, Kirchmann & Co., a corporation, by handing to and leaving a copy of the attached citation and order for foreign attachment with Mr. A. E. Wolff, president of said corporation, personally, and admonishing him of the remedy demanded by said citation and order.

I further return that I cited and admonished said garnishee, Wolff, Kirchmann & Co., a corporation, named herein, to appear before the United States District Court at San Francisco, California, on the 6th day of May, 1919, at 10 o'clock A. M., of said day to make return of any credits and effects due the above-named respondent, and to do and abide by what may be required of them in this behalf.

J. B. HOLOHAN,

U. S. Marshal.

By Harold Maguire,

Deputy.

San Francisco, California, April 25, 1919."

and

"I hereby certify and return that I received the attached citation, with order for foreign attachment, at San Francisco, California, on April 24, 1919, and after due and diligent inquiry made, I am unable to find the chattels of said respondent, within my district.

I further return that at San Francisco within the said Northern District of California, on the 25th day of April, 1919, I attached all the credits and effects of W. R. Car-

penter & Co. Ltd., a corporation, not to exceed the sum [6] of \$94,360.00, due or owing to W. R. Carpenter & Co., Ltd., a corporation, in the hands or under the control of American Trading Company of 244 California Street, San Francisco, California, by handing to and leaving a copy of the attached citation and order for foreign attachment, with Louis A. Ward, manager of said corporation, who is the person designated by the said American Trading Company under the Statutes of the State of California, as the person upon whom all legal process shall be served in matters affecting the American Trading Company, personally, and admonishing him of the remedy demanded by said citation and order.

I further return that I cited and admonished said garnishee, American Trading Company, named herein, to appear before the United States District Court at San Francisco, California, on the 6th day of May, 1919, at 10 o'clock A. M., of said day to make return of any credits and effects due the above-named respondent, and to do and

abide by what may be required of them in this behalf.

J. B. HOLOHAN,  
United States Marshal.  
By Harold Maguire,  
Deputy.

San Francisco, California, April  
25, 1919."

May

1. Issued citation and writ of foreign attachment, which was filed on return January 30, 1920, with the following return of U. S. Marshal endorsed thereon:

"I hereby certify and return that I received the attached citation with order for Foreign Attachment, at San Francisco, California, on May 1, 1919, and after due and diligent inquiry made, I am unable to find the respondent, W. R. Carpenter & Co., Ltd., a corporation, or any goods and chattels of said Respondent, within my district.

I further return that at San Francisco within the said Northern District of California, on the 1st day of May, 1919, I attached all the credits and effects of W. R. Carpenter & Co., Ltd., a corporation, not to exceed the sum of \$94,360.00, due or owing to W. R. Carpenter & Co., Ltd., a corporation, in the



hands or under the control of American Trading Company of 244 California Street, San Francisco, California, [7] by handing to and leaving a copy of the attached citation and order for foreign attachment, with Louis A. Ward, manager of said corporation, who is the person designated by the said American Trading Company under the Statutes of the State of California, as the person upon whom all legal process shall be served in matters affecting the American Trading Company, personally, and admonishing him of the remedy demanded by said citation and order.

I further return that I cited and admonished said garnishee, American Trading Company, named herein, to appear before the United States District Court at San Francisco, California, on the 6th day of May, 1919, at 10 o'clock A. M., of said day to make return of any credits and effects due the above-named respondent, and to do and abide by what may be required of them in this behalf.

J. B. HOLOHAN,

U. S. Marshal.

By Harold Maguire,

Deputy.



San Francisco, California, May 1,  
1919."

- May 6. This cause was this day ordered referred to United States Commissioner for the purpose of taking and reporting the testimony upon the issues joined herein.
- July 14. Filed amendment to statement of Wolff, Kirchmann & Co., Inc.
- 1920.
- January 20. Filed notice to garnishee, Wolff, Kirchman & Co., of Motion for delivery of property, etc.
30. Filed citation in *personam* on return.
- Filed citation and writ of foreign attachment, issued April 24, 1919, on return.
- Filed citation and writ of foreign attachment, issued May 1, 1919, on return.
- Filed answer to Garnishment (American Trading Co.).
- Filed statement of Wolff, Kirchmann & Co., dated May 22, 1919, *re* Garnishment. [8]
- January 31. Filed answer of garnishee, Wolff, Kirchmann & Co., to motion of libelants for order requiring them to deliver property or give stipulation.
- Filed affidavit of William Denman.

- July 1. Filed order that the commissioner report *re* credits and effects of respondent, in the hands of garnishee, American Trading Company.
- September 3. Filed report of U. S. Commissioner.  
4. On motion of libelants, it was this day ordered that the motion for delivery of shares be withdrawn.  
15. Filed libelants' exceptions to commissioner's report.  
Filed exceptions to commissioner's report, by garnishee, American Trading Company.  
18. The exceptions to commissioner's report were this day argued before the Honorable M. T. Dooling, Judge, and ordered submitted.  
28. Filed motion of respondent (on special appearance) to vacate writs of foreign attachment (*re* American Trading Company).
- October 11. Filed notice of hearing above motion, with affidavit of Louis A. Ward attached.  
30. The motion to vacate attachment was this day argued and submitted (Hon. M. T. Dooling, Judge).
- November 4. Filed petition and order permitting respondent to file affidavits in support of its motion to vacate attachment.

6. Filed petition and order permitting respondent to file additional affidavits in support of its motion to vacate attachment. [9]

November 6. Filed affidavits of Harold Maguire and William Denman.  
Filed affidavit of Louis A. Ward.

1921.

May 27. Filed opinion and order granting motion to vacate service of attachments upon garnishee. (Hon. M. T. Dooling, Judge).

June 2. Filed affidavit of Louis T. Hengstler in support of application for issuance of writ of foreign attachment.

Filed order allowing foreign attachment directed to Wolff, Kirchmann & Co., Garnishee.

Issued writ of foreign attachment directed to Wolff, Kirchmann & Co., Garnishee, which was filed on return July 13, 1921, with the following return endorsed thereon:

"I hereby certify and return that I received the annexed citation with order for foreign attachment, at San Francisco, California, on the 2d day of June, 1921, and after due and diligent inquiry made, I am unable to find the respondent W. R. Carpenter & Co., Ltd., a corpora-

tion, or any goods and chattels of said corporation within my district.

I further return that on the 3d of June, 1921, I attached all of the shares of capital stock of Wolff, Kirchmann & Co., a corporation, owned by said respondent, also all goods, moneys, choses in action and credits and effects of said respondent in the hands of said Wolff, Kirchmann & Co., not to exceed in all the sum of \$94,360, by demanding from A. E. Wolff, the President of said corporation, on said date, at the office of said corporation in the City and County of San Francisco, California, the delivery to me of any and all of said property and effects, and by reading to said A. E. Wolff, the original citation and order for foreign attachment hereunto annexed, and by delivering to and leaving with said A. E. Wolff a true and correct copy of said citation and order for foreign attachment, together with a notice of the property attached. [10]

I further return that I cited and admonished the said garnishee, Wolff, Kirchmann & Co., a corporation, to appear before the Southern Division of the United States Dis-

trict Court, for the Northern District of California, First Division, at Postoffice Building, San Francisco, California, at 10 o'clock A. M., on the 14th day of June, 1921, to then and there answer on oath as to such property and credits in its hands belonging to said respondent, and to do and abide by what may be required of it in this behalf.

J. B. HOLOHAN,  
United States Marshal,  
By Thos. F. Mulhall,  
Deputy.

San Francisco, California, June  
2d, 1921."

- |      |     |  |
|------|-----|--|
| June | 3.  | Filed motion of respondent to vacate attachment (Wolff, Kirchmann & Co.)<br>Filed notice of hearing above motion.<br>Filed affidavit of Alfred E. Wolff<br>re motion to vacate attachment. |
|      | 25. | Filed answer of Garnishee, Wolff, Kirchmann & Co.  |
| July | 2.  | The Court this day ordered that the motion to vacate attachment be granted and that execution be stayed ten days (Hon. M. T. Dooling, Judge).  |

- July      12. Filed notice of appeal (*re* order dated May 27, 1921).  
             Filed assignment of errors (*re* order dated May 27, 1921).  
             Filed notice of appeal (*re* order dated July 2, 1921).  
             Filed assignment of errors (*re* order dated July 2, 1921).  
             13. Filed writ of foreign attachment on return.  
             22. Filed stipulation *re* appeal bond, and as to death of David Goodale, one of the libelants.  
             Filed bond on appeal.
- August    12. Filed stipulation *re* facts of American Trading Company garnishment. [11]

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In the Southern Division of the District Court of the United States, for the Northern District of California, First Division.

(IN ADMIRALTY.)

G. H. ATKINS, CLIFTON H. KROLL, DAVID ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

## **Libel.**

To the Honorable MAURICE T. DOOLING,  
Judge of said Court:

The libel of G. H. Atkins, Clifton H. Kroll, David Atkins and David Goodale, against W. R. Carpenter & Co., Ltd., in a cause of contract, civil and maritime, respectfully alleges:

### **FIRST CAUSE OF LIBEL.**

#### **I.**

That at all the times herein mentioned said libelants, G. H. Atkins, Clifton H. Kroll, David Atkins and David Goodale, were and now are copartners doing a general shipping and commission business in the port of San Francisco, said Northern District of California, under the firm name and style of Atkins, Kroll & Co., being duly authorized thereunto by the laws of said State of California.

#### **II.**

That at all the the times herein mentioned said respondent, W. R. Carpenter & Co., Limited, was, and now is, as libelant is informed and believes, a corporation organized and [12] existing under and by virtue of the laws of New South Wales, Australia, and residing and doing business as copra merchants in the city of Sydney, in said province of New South Wales.

#### **III.**

That during the latter months of the year 1917, and the early months of 1918, respondent repeatedly and urgently requested libelants to secure tonnage



for respondent to enable the latter to export copra to the Pacific Coast of the United States, and to make to respondent, offers, from time to time, of the use of sailing vessels for said purpose, to be chartered by libelants for such use by respondent.

#### IV.

That in pursuance of said requests by respondent, and on or about the 10th day of April, 1918, libelant chartered from her owners, the Charles Nelson Company of San Francisco, the American Sailing Schooner "Minnie A. Caine," for a voyage from Sydney, N. S. W., to San Francisco, or Puget Sound port, agreeing to pay freight for the use of said schooner during said voyage at the rate of Forty Dollars (\$40) per 2,240 pounds delivered weight, less five (5) per cent. That said schooner, on the said 10th day of April, 1918, was at Adelaide, Australia, whence she was to proceed, direct or via Sydney, to a Pacific Coast port, whence she was to proceed to load lumber for Australia, whence she was to proceed to load a cargo of copra at Sydney under the said charter. That the estimated carrying capacity of said schooner for the carriage of copra in bulk is eight hundred and fifty (850) long tons, being tons of 2,240 lbs. each. [13]

#### V.

That on or about the 19th day of August, 1918, libelants, by letter, offered to respondent the use of the said schooner "Minnie A. Caine," under said charter for the freighting and transportation of a full cargo of copra from Sydney to San Francisco, at



the rate of Forty Dollars (\$40) per 2,240 pounds.

That on or about the 11th day of September, 1918, respondent, by cable, accepted the terms of the offer made by libelants, as aforesaid and, by letter of the same date, addressed to libelants, respondent expressly confirmed the freighting contract so made, in consideration of the payment, by respondent to libelant, of freight at the rate of Forty Dollars (\$40) net per 2,240 pounds delivered, and in further consideration of respondent conferring upon libelants the right to sell the cargo of copra to be sent to San Francisco by said vessel for respondent, and to receive therefor a commission of one and one-half per cent ( $1\frac{1}{2}$ ) of the sale price.

VI.

That thereafter, and in pursuit of the voyage on which said schooner was engaged by respondent, she arrived at the port of Sydney.

That before the arrival of said schooner "Minnie A. Caine" at the port of Sydney, charter rates had fallen in the freighting market. That on or about the 9th day of March, 1919, libelants duly tendered the said schooner to said respondent, said schooner being then and there at the port of Sydney and in all respects seaworthy and ready to load. That respondent thereupon refused to load the said schooner, and on or about the 25th day of March, 1919, upon expiration of the laydays provided in the charter-party, respondent notified libelants by cable that [14] it would not furnish the cargo for the schooner and repudiated the contract above mentioned.

## VII.

That libelants have, at all times mentioned, duly performed all the obligations, terms and conditions of the contract made between them and respondents as above stated.

## VIII.

That the damages caused to libelant by the said breach of contract by respondent amount to the sum of Twenty-nine Thousand Seven Hundred and Fifty Dollars (\$29,750.)

## IX.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court.

## SECOND CAUSE OF LIBEL.

## I.

For a second cause of libel, libelant alleges:

## I.

That at all the times herein mentioned said libelants, G. H. Atkins, Clifton H. Kroll, David Atkins and David Goodale, were and now are copartners doing a general shipping and commission business in the port of San Francisco, said Northern District of California, under the firm name and style of Atkins, Kroll & Co., being duly authorized thereunto by the laws of said State of California.

## II.

That at all the times herein mentioned said respondent, W. R. Carpenter & Co., Limited, was, and now is, as libelant is informed and believes, a corporation organized and existing under and by vir-

tue of the laws of New South Wales, Australia, and doing business as copra merchants in the city of Sydney, in said [15] province of New South Wales.

### III.

That during the latter months of the year 1917, and the early months of 1918, respondent repeatedly and urgently requested libelants to secure tonnage for respondent to enable the latter to export copra to the Pacific Coast of the United States, and to make to respondent offers, from time to time, of the use of sailing vessels for said purpose, to be chartered by libelants for such use by respondent.

### IV.

That, in pursuance of said requests by respondent, and on or about the 29th day of April, 1918, libelant chartered from her owners, the Charles Nelson Company of San Francisco the American sailing schooner "Minnie A. Caine" for a voyage from Sydney, N. S. W., or Levuka, to San Francisco, agreeing to pay freight for the use of said schooner during said voyage at the rate of Forty Dollars (\$40) per 2,240 lbs. delivered weight, less five (5) per cent, if she loaded at Sydney, N. S. W., and at the rate of \$42.50 per 2,240 pounds delivered, less 5%, if she loaded at Levuka, Fiji Islands. That in and by said charter-party, it was agreed that said schooner should, after performing her voyage under the charter in article IV of the "First Cause of Action" hereinabove described, load and carry a cargo of lumber for Australia and thereupon, upon her return voyage to San Francisco, load under said charter a full and com-

plete cargo of copra, in bulk, for San Francisco or Puget Sound port. That the estimated carrying capacity of said schooner for the carriage of copra in bulk is eight hundred and fifty (850) long tons, being tons of 2,240 lbs. each. [16]

#### V.

That thereafter, respondent entered into a freighting contract with libelants, whereby respondent agreed with libelants to use said schooner on the charter voyage from Australia or Levuka to San Francisco, in Article IV described, and to load the said schooner with a full cargo of copra after her eventual arrival at Sydney and readiness for said voyage, and agreed to pay to libelants for said use of said schooner at the rate of Forty Dollars (\$40) net per long ton, if respondent should elect to load said schooner at Sydney, and at the rate of Forty-five Dollars (\$45) net per 2,240 lbs., if respondent should elect to load said schooner at Levuka. And respondent further agreed by the said contract to confer upon libelants the right to sell the cargo of copra to be sent to San Francisco by said vessel for respondent, and to pay to libelants a commission of one and one-half ( $1\frac{1}{2}$ ) per cent for such service.

#### VI.

That thereafter charter rates fell in the freighting market and thereupon, and on or about the 25th day March, 1919, respondent notified libelants by letter that respondent then and there refused and would thereafter refuse, to recognize or to be further bound by, or to perform, the contract heretobefore

made and in Article V referred to. That, at the time of said notice received by libelants, the said schooner was lying at Sydney, waiting for cargo after respondent had breached the first charter, in Article V of the "First Cause of Action" hereinabove referred to.

#### VII.

That libelants have, at all the times herein mentioned, been ready and willing to perform and have duly performed, [17] all obligations, terms and conditions of the contract, on their part to be performed.

#### VIII.

That the damage caused to libelants by the said anticipatory breach of contract by respondent cannot, at the time of the filing of this libel, be ascertained with any degree of accuracy, and therefore libelants pray for leave of the Court to insert the same in this libel as they may hereafter be found; but libelants anticipate that said damages, at a fair estimate, will amount to no less than the sum of Thirty-seven Thousand Four Hundred and Eighty-five Dollars (\$37,485).

#### IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

### THIRD CAUSE OF LIBEL.

#### I.

That at all the times herein mentioned said libelants, G. H. Atkins, Clifton H. Kroll, David Atkins

and David Goodale, were and now are copartners doing a general shipping and commission business in the port of San Francisco, said Northern District of California, under the firm name and style of Atkins, Kroll & Co., being duly authorized thereunto by the laws of said State of California.

## II.

That at all the times herein mentioned said respondent, W. R. Carpenter & Co., Limited, was, and now is, as libelant is informed and believes, a corporation organized and existing under and by virtue of the laws of New South Wales, Australia, and [18] doing business as copra merchants in the city of Sydney, in said province of New South Wales.

## III.

That during the latter months of the year 1917, and the early months of 1918, respondent repeatedly and urgently requested libelants to secure tonnage for respondent to enable the latter to export copra to the Pacific Coast of the United States, and to make to respondent offers, from time to time, of the use of sailing vessels for said purpose, to be chartered by libelants for such use by respondent.

## IV.

That, in pursuance of said requests by respondent, and on or about the 10th day of April, 1918, libelants chartered from her owners, the Charles Nelson Company of San Francisco, the American sailing schooner "Taurus" for a voyage from Sydney N. S. W., or Apia, or Levuka, or Papeete, to San Francisco, agreeing to pay freight for the use of said Vessel,



during said voyage, at the rate of Forty Dollars (\$40) per 2,240 lbs. delivered weight, less five (5) per cent, if said schooner loaded at Sydney, and at the rate of Forty-five Dollars (\$45) per 2,240 lbs. delivered weight, less five (5) per cent, if she loaded either at Apia, or Levuka, or Papeete. At the time of the making of said charter-party, the said vessel was on passage to the Pacific Coast, whence she was to proceed to Australia, whence she was to proceed to a copra port under a previous charter and fulfil said charter; then she was to proceed to load lumber for Australia, whence she was to proceed to load a cargo of copra in bulk under the charter herein mentioned. That the estimated carrying capacity of said schooner for the carriage of copra in bulk is 625 long tons, being tons of 2,240 pounds each. [19]

V.

That thereafter, respondent entered into a freighting contract with libelants, whereby respondent agreed to use said schooner on charter voyages in Article IV described and to load the said schooner with a full cargo of copra after her eventual arrival at the loading port designated by respondent, and her readiness for the charter-voyage, and to pay to libelants for the use of said schooner at the rate of Forty Dollars (\$40) net per 2,240 lbs. delivered weight, if respondent should elect to load said schooner at Sydney, and at the rate of Forty-five Dollars (\$45) net per 2,240 lbs. delivered weight, if respondent should elect to load said schooner at Levuka, Fiji Islands. And respondent further agreed

by the said contract to confer upon libelants the right to sell the cargo of copra to be sent to San Francisco by said vessel of respondent, and to pay to libelants a commission of one and one-half (1½) per cent for such service.

#### VI.

That thereafter charter rates fell in the freighting market, and thereupon and on or about the 25th day of March, 1919, respondent notified libelants by letter that respondent then and there refused, and would thereafter refuse, to recognize or to be further bound by, or to perform, the contract heretofore made and in Article V, referred to. That, at the time of said notice given to libelants, the said schooner was engaged in a voyage precedent to the charter voyage on which respondent had contracted to use her as hereinabove described.

#### VII.

That libelants have, at all times herein mentioned, been ready and willing to perform, and have duly performed, all the obligations, terms and conditions of the contract, on their part to be performed. [20]

#### VIII.

That the damages caused to libelants by the said anticipatory breach of contract by respondent cannot, at the time of the filing of this libel, be ascertained with any degree of accuracy, and therefore libelants pray for leave of the Court to insert the same in this libel as they may hereafter be found; but libelants anticipate that said damages will, at a fair estimate, amount to no less than the sum of



Twenty-seven Thousand One Hundred and Twenty-five Dollars (\$27,125).

WHEREFORE libelants pray:

That a monition, according to the practice of this Honorable Court, may issue against the respondent, W. R. Carpenter and Co., Ltd., citing it to appear and answer on oath the matters aforesaid, and that, in case respondent cannot be found, then that its goods and chattels be attached to the amount sued for; and that, if sufficient goods and chattels cannot be found, its credits and effects be attached in the hands of American Trading Company, and of Wolff Kirchmann & Co., garnishees, and of any other garnishees having credits and effects of said respondent in hands; and that the said garnishees may be cited to appear and answer on oath as to credits and effects in their hands and belonging to said respondent; and that this Honorable Court would be pleased to decree to the libelants, the payment of the damages sustained by said libelants, in the sum of \$94,360, or such other sum as libelants may be entitled to recover, with costs, and that libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

ANDROS & HENGSTLER,

Proctors for Libelants. [21]

State of California,

City and County of San Francisco,—ss.

G. H. Atkins, being duly sworn, deposes and says:

I am one of the libelants in the foregoing libel mentioned and a member of the copartnership of Atkins

Kroll & Co. I have read the foregoing libel and know the contents thereof, and the same is true, except as to matters therein alleged on information and belief, and as to such matters I believe it to be true.

G. H. ATKINS.

Subscribed and sworn to before me this 21st day of April, 1919.

[Seal]

JOHN E. MANDERS,

Notary Public, in and for the City and County of San Francisco, State of California.

Let process issue as prayed for.

W. H. HUNT,

Judge of Said Court.

[Endorsed]: Filed April 24, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [22]

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**Citation.**

Northern District of California,—ss.

The President of the United States of America, To the Marshal of the United States for the Northern District of California, GREETING:

WHEREAS, a libel has been filed in the District Court of the United States for the Northern District of California, First Division, on the 24th day of April, in the year of our Lord, one thousand nine hundred and nineteen, By G. H. Atkins, Clifton H. Kroll, David Atkins and David Goodale, Libelants; vs. W. R. Carpenter & Co., Ltd., a corporation, in a certain action for damages, civil and maritime, to re-

cover the sum of \$94,360.00 (as by said libel, reference being hereby made thereto, will more fully and at large appear), therein alleged to be due the said libelant, and praying that a citation may issue against the said respondent, pursuant to the rules and practice of this Court.

Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, that you cite and admonish the said respondent, if it shall be found in your District, that it be and appear before the said District Court, on Tuesday, the 6th day of May, A. D. 1919, at 10 o'clock in the forenoon at the Courtroom in the city of San Francisco, then and there to answer the said libel, and to make its allegations in that behalf: and have you then and there this writ, with your return thereon.

WITNESS, The Honorable M. T. DOOLING, Judge of said Court, the 24th day of April in the year of our Lord, one thousand nine hundred and nineteen.

[Seal]

WALTER B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

ANDROS & HENGSTLER,  
Proctor for Libelant.

[Endorsed]: Filed Jan. 30, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [23]  
Northern District of California,—ss.

I hereby certify and return, that on the 24th day of April, 1919, I received the attached citation and that

after diligent search, I am unable to find the within named respondent, W. R. Carpenter & Co., Ltd., a corporation, within my district.

J. B. HOLOHAN,  
United States Marshal.  
By Harold Maguire,  
Deputy United States Marshal. [24]

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ORIGINAL.

In the Southern Division of the District Court of the United States, for the Northern District of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

**Writ of Foreign Attachment—Issued April 24, 1919.**

The President of the United States of America to the Marshal of the Northern District of California, GREETING:

Whereas, a libel has been filed in the District Court of the United States of America for the First Division of the Northern District of California, on the 24th day of April, in the year 1919, by G. H. Atkins, et als., libelants, against W. R. Carpenter & Co., Ltd., in a certain cause, civil and maritime, for breach of contract of affreightment, wherein libelants

allege damages amounting to the sum of ninety-four thousand three hundred and sixty dollars (\$94,360.), and prays that a monition may issue against the said respondent, pursuant to the practice of this court, and that its goods and chattels and its credits and effects may be attached to compel the attendance of respondent in case it cannot be found;

Now, therefore, [25] we do hereby empower, and strictly charge and command you, the said marshal, that you warn the said respondent, if it shall be found in your district, to be before the said District Court of the United States, at the United States Post-office Building, in the City and County of San Francisco, on the 6th day of May, 1919, at 10 o'clock A.M., then and there to answer the said libel, and to make its allegations in that behalf; and if the said respondent cannot be found in your district, we further command you that you attach its goods and chattels in your district to the amount sued for, and if no goods and chattels can be found, that you attach his credits and effects to the amount sued for, in the hands of American Trading Company, and of Wolff Kirchner & Co., garnishees, and of any other garnishees having credits and effects of said respondent in hand; and that you summon the said garnishees to appear before the said District Court on the said 6th day of May, 1919, to do and abide what may be required of them in this behalf; and have you then and there this writ, with your return thereon.

WITNESS the Honorable M. T. DOOLING, Judge of said court, this 24th day of April, in the year of our Lord 1919.

[Seal]

W. B. MALING,

Clerk of Said Court.

By C. W. Calbreath,

Deputy.

ANDROS & HENGSTLER,

Proctors for Libelants.

[Endorsed]: Filed Jan. 30, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [26]

United States of America,

Northern District of California,

Southern Division,

City and County of San Francisco,—ss.

**United States Marshal's Return of Service of Citation, with Order for Foreign Attachment.**

I HEREBY CERTIFY AND RETURN that I received the attached citation with order for foreign attachment, at San Francisco, California, on April 24, 1919, and after due and diligent inquiry made, I am unable to find the respondent, W. R. Carpenter & Co., Ltd., a corporation, or any goods and chattels of said respondent, within my district.

I FURTHER RETURN that at San Francisco within the said Northern District of California, on the 25th day of April, 1919, I attached all the credits and effects of W. R. Carpenter & Co., Ltd., a corporation, not to exceed the sum of \$94,360, due or owing to W. R. Carpenter & Co., Ltd., a corporation, in the hands or under the control of Wolff, Kirchmann &



Co., a corporation, by handing to and leaving a copy of the attached citation and order for foreign attachment with Mr. A. E. Wolff, president of said corporation, personally, and admonishing him of the remedy demanded by said citation and order.

I FURTHER RETURN that I cited and admonished said Garnishee, Wolff, Kirchmann & Co., a corporation, named herein, to appear before the United States District Court at San Francisco, California, on the 6th day of May, 1919, at 10 o'clock A. M., of said day to make return of any credits and effects due the above-named respondent, and to do and abide by what may be required of them in this behalf.

J. B. HOLOHAN,  
U. S. Marshal.

By Harold Maguire,  
Deputy.

San Francisco, California, April 25, 1919. [27]

United States of America,  
Northern District of California,  
Southern Division,  
City and County of San Francisco,—ss.

**United States Marshal's Return of Service of Citation, with Order for Foreign Attachment.**

I HEREBY CERTIFY AND RETURN that I received the attached citation with order for foreign attachment, at San Francisco, California, on April 24, 1919, and after due and diligent inquiry made, I am unable to find the respondent, W. R. Carpenter

& Co., Ltd., a corporation, or any goods and chattels of said respondent, within my district.

I FURTHER RETURN that at San Francisco within the said Northern District of California, on the 25th day of April, 1919, I attached all the credits and effects of W. R. Carpenter & Co., Ltd., a corporation, not to exceed the sum of \$94,360, due or owing to W. R. Carpenter & Co., Ltd., a corporation, in the hands or under the control of American Trading Company of 244 California Street, San Francisco, California, by handing to and leaving a copy of the attached citation and order for foreign attachment, with Louis A. Ward, manager of said corporation, who is the person designated by the said American Trading Company under the Statutes of the State of California, as the person upon whom all legal process shall be served in matters affecting the American Trading Company, personally, and admonishing him of the remedy demanded by said citation and order.

I FURTHER RETURN that I cited and admonished said Garnishee, American Trading Company, named herein, to appear before the United States District Court at San Francisco, California, on the 6th day of May, 1919, at 10 o'clock A. M., of said day to make return of any credits and effects due the above-named respondent, and to do and abide by what may be required of them in this behalf.

J. B. HOLOHAN,  
United States Marshal.  
By Harold Maguire,  
Deputy.

San Francisco, California, April 25, 1919. [28]



In the Southern Division of the District Court of the  
United States in and for the Northern District  
of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

**Statement of Wolff, Kirchmann & Co., Inc.**

To The Honorable, the Judge of the United States  
District Court, for the Northern District of  
California:

Wolff, Kirchmann & Co., Inc., respectfully represent:

I.

That at the date the United States Marshal handed it a copy of the writ herein, it had no goods and chattels or credits and effects belonging to said W. R. Carpenter & Co., Ltd., a corporation, respondent in the above-entitled action, nor has it since had any; that said W. R. Carpenter & Co., Ltd., a corporation, owns 300 shares of stock of said Wolff, Kirchmann & Co. Inc., of a par value of \$100 each; that said shares of stock are fully paid up.

Dated, May 22, 1919.

WOLFF, KIRCHMANN & CO., INC.

By ALFRED E. WOLFF,

President.

WILLIAM DENMAN,

Proctor for Wolff, Kirchmann & Co. Inc. [29]

State of California,  
City and County of San Francisco,—ss.

Alfred E. Wolff, being first duly sworn, deposes and says that he is an officer of said Wolff, Kirchmann and Co., Inc., to wit, president thereof, and as such is authorized to make this verification in its behalf; that he has read the foregoing return and knows the contents thereof; that the same is true according to his best knowledge and belief.

ALFRED E. WOLFF.

Subscribed and sworn to before me this 20th day of May, 1919.

[Seal]

KATHRYN E. STONE,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Receipt of a copy of the within Statement, etc., is hereby admitted this 22d day of May, 1919.

ANDROS & HENGSTLER,  
Attorneys for Libelant.

[Endorsed]: Filed Jan. 30, 1920. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [30]

In the Southern Division of the District Court of  
the United States in and for the Northern  
District of California, First Division.

IN ADMIRALTY.

C. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corpora-  
tion,

Respondent.

**Amendment to Statement of Wolff, Kirchmann &  
Co., Inc.**

To the Honorable, the Judges of the United States  
District Court, for the Northern District of  
California:

Wolff, Kirchmann and Co., Inc., respectfully beg  
to amend their statement heretofore filed herein by  
adding to paragraph I thereof the following sen-  
tence:

“That at the time of the receipt of said copy  
of said writ the said W. R. Carpenter and Co.,  
Ltd., appeared in the books and records of the  
said Wolff, Kirchmann and Co., Inc., as the  
owner of said 300 shares of stock.”

Dated: July 10th, 1919.

WOLFF, KIRCHMANN AND CO., INC.,

By ALFRED E. WOLFF,

President.

WILLIAM DENMAN,

Proctor for Wolff, Kirchman and Co., Inc.

Due service and receipt of a copy of the within amendment to statement of Wolff, Kirchmann & Co., Inc., is hereby admitted this 11th day of July, 1919.

ANDROS & HENGSTLER,

Attorneys for Libellants.

[Endorsed]: Filed July 14, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [31]

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In the Southern Division of the District Court of  
the United States for the Northern District of  
California, First Division.

IN ADMIRALTY—No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL and  
DAVID ATKINS,

Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corpora-  
tion,

Respondent.

WOLFF, KIRCHMANN & CO., a Corporation,  
Garnishee.

**Stipulation Re Facts of American Trading Company  
Garnishment.**

IT IS HEREBY STIPULATED that the facts relating to the attachment herein against the American Trading Company, a corporation, garnishee, and the motion to vacate said attachment, are as follows:

On April 25th, 1919, the process in foreign attachment which was issued in this action on April 24th, 1919, was served upon the said American Trading Company, garnishee. A second citation and writ of foreign attachment was issued on May 2d, 1919, and was served upon the American Trading Company, as garnishee. The garnishee filed an answer setting forth the debits and credits existing between itself and the respondent above named, and the matter was referred to a commissioner for the purpose of taking testimony and reporting to the Court what credits and effects were in the hands of the garnishee when the writ was served. The commissioner took testimony from time to [32] time and on March 27th, 1920, the matter was finally submitted to him for decision and on September 10, 1920, his report was filed. The commissioner found that at the time when the first writ of attachment was served on the American Trading Company, there were in its hands credits of the respondent amounting to \$6,948.11. Exceptions were filed to the report of the commissioner, and on September 18, 1920, were argued and submitted to the Court for decision.

On October 11, 1920, the respondent *W. R. Carpenter & Co., Ltd.*, appeared specially, and moved to vacate the attachments against the American Trading Company, alleging 13 grounds why the attachment should be vacated, the first 12 of said grounds being identical with the first 12 grounds in its later motion to vacate the attachment against *Wolff*

Kirchmann & Co., the thirteenth ground of said motion being as follows:

“13. That no order for the monition and process of May 1st, 1919, was ever made by this Court.”

In support of its motion to vacate the American Trading Company attachments, the respondent filed the affidavits of William Denman, Harold Maguire and Louis A. Ward, copies of which affidavits are hereunto attached and by reference made a part hereof.

The motion was submitted to the Court upon briefs filed by both libelants and respondent, and on May 27th, 1921, an opinion was rendered and an order entered granting respondent's motion to vacate the American Trading Company attachments. A copy of the opinion is included in the apostles on appeal. Respondent thereafter moved to vacate the Wolff, Kirchmann & Co. attachment on substantially the same grounds which had been urged against the American Trading Company attachments, and the Court followed its [33] previous ruling and entered a minute order on July 2d, 1921, vacating the Wolff Kirchmann & Co. attachment.

Dated: August 12, 1921.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,  
F. W. DORR,

Proctors for Libelants.

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WILLIAM DENMAN,  
Proctors for Respondent. [34]

In the Southern Division of the District Court of  
the United States in and for the Northern  
District of California, First Division.

IN ADMIRALTY—No. 16,552.

C. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corpora-  
tion,  
Respondent.

**Affidavit of William Denman on Motion to Quash  
Foreign Attachment to Secure Jurisdiction Over  
an Australian Corporation.**

RELATIVE TO PRACTICE ON ATTACH-  
MENTS, AND MR. MAGUIRE'S AFFI-  
DAVIT.

State of California,  
City and County of San Francisco,—ss.

William Denman, being first duly sworn, deposes  
and says:

That at the time of the attempted service of the  
two writs of attachment herein it was the practice, in  
accordance with the District Court Rules in Ad-  
miralty, and particularly Rule 11, and at all times  
had been the practice under such rules, in attempt-  
ing to attach or garnishee credits of a foreign re-  
spondent to serve upon the garnishee a notice of the  
property garnished in the hands of the garnishee,



together with the writ authorizing the marshal to make such attachment, which said notice is in the form set forth in Exhibit "A" hereunto annexed and hereby made a part hereof.

That at the time of said two attempted attachments or garnishments of credits of the respondent in the hands of the [35] American Trading Company, the deputy marshal, Mr. Maguire, had never made such service, and did so in the absence of Mr. Burnham, chief deputy in charge of such services of the United States marshal's office in this District; that he was unfamiliar with the methods of said service, and did fail to serve any notice whatsoever of the credits attached at the time he handed to the representative of the American Trading Company the writ returned herein; that he was so unfamiliar with the acts constituting a proper service that he did not know how to make a return upon the writ; that on account of the absence of Mr. Burnham from the office, he delayed making his return for many months awaiting his advice as to the method of making the return; that the return in question was finally drafted, but antedated to the date of the attempted attachments; that the return was actually made by filing the writ with the clerk of the said Court on or about the last of December, 1919, that is, over seven months after the time of the acts recited in the return.

That your affiant was unaware of the delay in making and filing the return until within five days last past, until which time he assumed that the Marshal had filed his return on the return day of such

writs, to wit, the 6th, day of May, 1920. This delay made more significant to your affiant the affidavit of Mr. Maguire hereunto annexed.

WILLIAM DENMAN.

Subscribed and sworn to before me, this 4th day of November, 1920.

[Seal] MURIEL ATHERTON RUSSELL,  
Notary Public, in and for the City and County of  
San Francisco, State of California. [36]

**Exhibit "A."**

United States of America,  
Northern District of California,—ss.

No. 15,968.

THE CHARLES NELSON COMPANY, a Corp.,  
Libellant,

vs.

THE LLOYD MEXICANO, S. A., a Corp., and F.  
JEBSEN,

Respondents.

United States Marshal's Office,  
San Francisco, California, February 2, 1916.

You will please take notice that all moneys, goods, credits and effects to the amount sued for herein, to wit, the sum of nine hundred fifty and 50/100 (\$950-.50) Dollars, debts due nor owing to Lloyd Mexicano, S. A., a corporation, and F. Jebsen, or belonging or owing to them or either of them, or any other personal property in your possession or under your control belonging to the said Lloyd Mexicano, S. A., a corporation, and F. Jebsen, or either of them, the

respondents named in the writ of attachment, of which the annexed is a copy, are attached by virtue of the said writ, and you are hereby notified not to pay over or transfer the same to anyone but myself.

Please furnish me with a statement thereof.

You are further notified and summoned to appear before the United States District Court, in and for the Northern District of California, in the Postoffice Building, corner of Seventh and Mission Streets, of the City and County of San Francisco, California, on February, 1916, at the hour of ten o'clock A. M., to answer on oath as to the credits and effects of the respondent herein in your hands, as prayed for in the libel on file herein, to do and abide by what may be required of you in this behalf.

Yours respectfully,

J. B. HOLOHAN,

U. S. Marshal,

By \_\_\_\_\_,

Chief Salary Deputy.

Exhibit "A" [37]

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corporation,  
Respondent.

**Affidavit of Harold Maguire.**

In the Northern District of California,  
United States of America,—ss.

Harold Maguire, being first duly sworn, deposes and says that he is a deputy United States marshal in and for the said District, that he delivered the two writs of foreign attachment, upon which he has heretofore made return in this cause to the American Trading Company, a corporation, in the following manner, to wit:

Between the hours of nine (9) and ten (10) A. M. on the twenty-fifth day (25) of April, 1919, he called at the office of the American Trading Company in the city and county of San Francisco, and inquired for Mr. Louis A. Ward, representative of the said company, entitled to accept service of process. He was presented to Mr. Ward and told him that he (affiant) was such deputy marshal, and asked him whether or not he was an agent of the American Trading Company to accept such process. Mr. Ward replied that he was. Affiant thereupon handed to Mr. Ward the copy of the writ of attachment upon which he has made return herein. [38]

Mr. Ward did not decline to deliver up the credits named in the writ, nor did he deny the same to be the property of the defendant. Nothing was said about the credits to my present knowledge.

On or about the first day of May, 1919, affiant again called upon Mr. Ward at the offices of the American Trading Company, and delivered to him a second

copy of the process upon which affiant has made return herein. The same occurrences transpired. There was no discussion of any kind concerning the credits. Mr. Ward took the copy, affiant did not request Mr. Ward to deliver up the credits to him, Mr. Ward did not deny them to be the property of the defendant and neither asked any questions nor said anything about the credits.

HAROLD MAGUIRE.

Subscribed and sworn to this 25th day of September, 1920.

[Seal]

C. W. CALBREATH,

Deputy Clerk, U. S. District Court. [39]

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In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corporation,

Respondent.

**Amended Affidavit of Louis A. Ward.**

State of California,

City and County of San Francisco,—ss.

Louis A. Ward, being first duly sworn, deposes and says: That he is the representative of the Ameri-

can Trading Company authorized to accept service of process, and was in the months of April and May, 1919. That on or about the 25th day of April, 1919, a young gentleman, whom he now understands to be Mr. Maguire, a deputy United States marshal, was presented to him in the office of the American Trading Company as a deputy United States marshal. Mr. Maguire asked affiant whether he was authorized to accept process for the American Trading Company, and affiant answered that he was authorized to accept such process. Mr. Maguire then handed him a copy of the writ of attachment addressed to the marshal, and retired, before affiant had any opportunity to read the document. There was no discussion of any kind between affiant and Mr. Maguire as to the property attempted to be attached by the service of the document, nor was there, as your affiant now recollects, any discussion of the contents of the document. Affiant was at no time requested to surrender or pay to Mr. Maguire, as deputy marshal, or otherwise, any credits which he might have had belonging to respondent in this case. Affiant did not decline [40] to deliver up to the marshal any property, effects or credits named in the said document, or at all. He was not given any opportunity to do this, nor was he at any time advised that he was entitled to or expected to deliver up or pay over to the marshal any property, effects or credits of any kind.

On or about May 1st, 1919, Mr. Maguire again called upon affiant at the office of the American Trad-



ing Company and handed to him a second document purporting to be a copy of a writ of attachment addressed to the marshal. There was no discussion of the contents of the writ, and no request that there be paid over or delivered up to Mr. Maguire, as such deputy marshal, any property, effects or credits belonging to the respondent. Mr. Maguire left immediately after he handed to affiant this second copy of the writ of attachment. No documents (other than the two writs of attachment) of any other kind were served or handed by Mr. Maguire on either occasion, or at any time.

LOUIS A. WARD.

Subscribed and sworn to before me, this 5th day of November, 1920.

[Seal] MURIEL ATHERTON RUSSELL,  
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 12, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [41]

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In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE.

Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corporation,

Respondent.



**Opinion and Order Granting Motion to Vacate Service of Attachment Upon Garnishee—American Trading Company.**

ANDROS & HENGSTLER, Proctors for Libelants.  
SAMUEL KNIGHT, Esq., and F. E. BOLAND, Attorneys for American Trading Company.

WILLIAM DENMAN, Esq., Proctor for Respondent, W. R. CARPENTER & CO., LTD., appearing specially to vacate attachments.

Upon the filing of the libel herein, libelant secured an order from the Court for the issuance of a “monition against respondent citing it to appear and answer, and in case respondent cannot be found that its goods and chattels be attached to the amount sued for; and if sufficient goods and chattels cannot be found, that its credits and effects be attached in the hands of American Trading Company, and of Wolff, Kirchman & Co., garnishees, and of any other garnishees having credits and effects of said respondent in hands; and that said garnishees may be cited to appear and answer on oath as to credits and effects in their hands and belonging to respondent.” This was the prayer of the libel, and the order of the Court was in the following form: “Let process issue as prayed for.”

The respondent is a foreign corporation and could not be found in this District. [42]

The process issued in accordance with this order was directed to the marshal and contained the following, after preliminary recitals, “Now, therefore,

we do hereby empower, and strictly charge and command you, the said marshal, that you warn the said respondent, if it shall be found in your district, to be before the said District Court of the United States, at the United States Postoffice Building, in the city and county of San Francisco, on the 6th day of May, 1919, at 10 o'clock A. M., then and there to answer the said libel, and to make its allegations in that behalf; and if the said respondent cannot be found in your district, we further command you that you attach its goods and chattels in your district to the amount sued for, and if no goods and chattels can be found, that you attach his credits and effects to the amount sued for, in the hands of American Trading Company, and of Wolff, Kirchman & Co., garnishees, and of any other garnishees having credits and effects of said respondent in hand; and that you summon the said garnishees to appear before the said District Court on the said 6th day of May, 1919, to do and abide what may be required of them in this behalf; and have you then and there this writ, with your return thereon."

The respondent not being found in the District, nor any of its goods or chattels, a copy of this process was delivered to American Trading Co. and to Wolff, Kirchman & Co. named therein as garnishees, but no notice of the property attached was given them nor was any mention of such property made, nor were the effects and credits delivered to the marshal by the garnishee. The only service of the attachment was by the delivery of the copy of the pro-

cess. This was on April 25th, 1919. A second process without further order of the Court was later issued, which was in [43] the same form and served in the same way on May 1st. The garnishees answered as required, and it is contended by them that they had no credits or effects of respondent, and by libellant that they had.

Respondent, however, appearing specially for that purpose, moves to vacate the attachments on a number of grounds. The gravest one in my opinion is based on the fact that the only service on the garnishees was by leaving a copy of the process with them. The manner of service of a foreign attachment is provided for in Rule 11 of the Admiralty Rules of this Court which is as follows:

“11.

SERVICE OF FOREIGN ATTACHMENT, AND  
OF PROCESS AGAINST FREIGHT AND  
PROCEEDS.

When the property, effects, or credits named in any process of foreign attachment, are not delivered up to the marshal by the garnishee or are denied by him to be the property of the party defendant, it shall be a sufficient service of such foreign attachment to leave a copy thereof with such garnishee, or at his usual residence or place of business, with notice of the property attached; and on due return thereof by the marshal the libellant, on proof satisfactory to the Court that the property belongs to the defendant, may proceed to a hearing and final decree in the cause. If the defendant appears, fur-

ther proceedings may be had as is usual in suits IN PERSONAM."

In addition to leaving a copy of the foreign attachment with the garnishee this rule requires that there also be left with him "a notice of the property attached." The old rule required only that a copy of the foreign attachment be left with the garnishee. The words "with notice of the property attached" were added for a purpose, and I believe that purpose was to make the manner of service conform to the manner of service of writs of attachment under the State law. The New York, rules, from which the rule of this Court was taken, formerly provided that service might be made by leaving a copy of the attachment with the garnishee, but that rule has been amended so that it too now requires that [44] a notice of the property attached be also left with him. This manner of service conforms both here and in New York to the manner of service of an attachment in each State. There are many decisions in each State holding that the giving of a notice of the property attached is essential to a valid garnishment. As no service upon respondent can be had, the only jurisdiction that the Court can have is over his property or effects in this District. To acquire such jurisdiction the rules must be adhered to in all essentials. In the absence of a statute on the subject they have the force of law. It would be an idle thing to amend the rule so as to require notice of the property attached to be given or left with the garnishee, and upon the first occasion when the ques-

tion arises, to say that the requirement is without any significance.

The present rules were prepared by a Committee of the Admiralty Bar, and adopted by the Court as an improvement over the ones formerly in use, and there is no reason why they should not be given effect.

As there was no valid service of the attachments upon the garnishees named, and as such service is essential to the jurisdiction of the Court over respondent's property, effects or credits in this District, the motion to vacate will be granted, and it is so ordered.

May 27th, 1921.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed May 27, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [45]

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In the Southern Division of the District Court of  
the United States, in and for the Northern  
District of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corpora-  
tion,

Respondent.

**Notice of Motion on Special Appearance to Vacate  
Attachment.**

To the Libelants Above Named and to Louis T.  
Hengstler, Esq., Their Proctor:

You and each of you will please take notice that respondent's motion on special appearance to vacate attachment, served and filed herein will be made on Saturday the 11th day of June, 1921, at 10 o'clock A. M., or as soon thereafter as counsel can be heard in the courtroom of the above-entitled court in Room 332 in the Postoffice Building in the city and county of San Francisco.

The said motion will be based upon the pleadings, papers, and documents on file herein including said motion and the affidavit of Alfred E. Wolff in support thereof and this notice of motion.

Dated: June 1st, 1921.

WILLIAM DENMAN,  
Proctor for Respondent, W. R. Carpenter and Co.,  
Ltd., Appearing Specially to Vacate Attachment.

Receipt of a copy of the within is hereby admitted  
this 2d day of June, 1921.

ANDROS & HENGSTLER,  
Attorney for Libelants.

[Endorsed]: Filed June 3, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [46]



In the Southern Division of the District Court of  
the United States, in and for the Northern  
District of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corpora-  
tion,  
Respondent.

**Motion on Special Appearance to Vacate Attach-  
ment.**

To the Honorable Judges of the Said District Court:

The undersigned respondent above described herein hereby appears specially (and not generally) to vacate attachment to be levied upon its credits, effects and property alleged to be in the hands of, or under the control of, Wolff, Kirchmann & Co., a corporation, and moves to vacate the attachment and garnishment attempted to be made herein by attempted service on said Wolff, Kirchmann & Co. on the grounds:

1. That no citation in the nature of a summons to appear and answer to the suit has been issued herein, as required by the rules of this Court, or at all.
2. That the Court has not ordered the issuance of a citation or any proper process herein.
3. That no attempt has been made to find the



respondent in the said District by the United States marshal, or at all.

4. That no attempt has been made by the marshal to find or attach any of respondent's goods and chattels in the said District for the amount sued for, or at all.

5. That the marshal has not attached any of respondent's credits and effects in the hands of Wolff, Kirchman Co. because: the marshal did not serve upon said Wolff, Kirchmann & Co. any [47] form of attachment, complying with the rules of said Court, by leaving a copy thereof with Wolff, Kirchmann & Co., or at its usual residence or place of business.

6. That the marshal has not attached any of respondent's credits and effects in the hands of Wolff, Kirchmann & Co. because the marshal did not leave with said Wolff, Kirchmann & Co. at its usual residence or place of business, or at all, any notice of the property attached.

7. The marshal did not at any time request Wolff, Kirchmann & Co. to deliver up to the Marshal any property, effects or credits named in said purported process, or at all, but simply, without giving Wolff, Kirchmann & Co. any opportunity to deliver up, or to know that it might deliver up such, or any property to the marshal, handed to the said Wolff, Kirchmann & Co. a copy of the purported form of attachment returned by the marshal herein, and immediately left the said Wolff, Kirchmann & Co., before it had an opportunity to read the same.

8. That no summons was served on garnishee,

Wolff, Kirchmann & Co., to appear before said Court, as provided in the monitions issued herein.

9. That the said Wolff, Kirchmann & Co. was at no time cited to appear and answer on oath.

10. That no due or other proof of demand, (1) as to the first cause of libel, or (2) as to the second cause of libel, or (3) as to the third cause of libel or as to any or all causes of libel herein, has been made first or at all to the said Court.

11. That no due or other proof of the propriety of the attachment has been made to the Court.

12. That the specific property in the hands of Wolff, Kirchmann & Co. has not been stated in the libel, or in the process.

13. That at the time of the attempted levy of the said [48] attachment, there were no property, credits or effects of, or due or owing to, the respondent, W. R. Carpenter & Co., Ltd., in the hands of, or under the control of, said Wolff, Kirchmann & Co.; that at said time it appeared upon the books of said corporation that certain stock in the said corporation had been issued to the respondent; but at the time of the attempted attachment and garnishment herein, respondent was not the owner of the said stock, and the said stock was not due or owing to it, nor was it in the hands or under the control of said Wolff, Kirchmann & Co.

That said motion will be made upon the pleadings, orders, process and return and all documents on file herein, and upon the affidavit of A. E. Wolff hereunto annexed.

WHEREFORE, the said W. R. Carpenter and Co., Ltd., moves and prays for a vacation of said attempted attachment and garnishment, and for such other and further relief as to the Court may seem proper.

WILLIAM DENMAN,

Proctor for Respondent, W. R. Carpenter and Co.,  
Ltd., Appearing Specially (and not Generally)  
to Vacate Attachment.

Receipt of a copy of the within notice to vacate attachment is hereby admitted this 31st day of May, 1921.

ANDROS & HENGSTLER,

Attorney for Libelant.

[Endorsed]: Filed June 3, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [49]

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In the Southern Division of the District Court of  
the United States, in and for the Northern  
District of California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

**Affidavit of A. E. Wolff.**

State of California,  
City and County of San Francisco,—ss.

Alfred E. Wolff, being first duly sworn, deposes and says: That he is the representative of Wolff, Kirchmann & Co. authorized to accept service of process, and was in the month of April, 1919. That on or about the 25th day of April, 1919, a young gentleman, whom he now understands to be Mr. Maguire, a deputy United States marshal, approached him in the office of Wolff, Kirchmann & Co. Mr. Maguire asked affiant whether he was authorized to accept process for Wolff, Kirchmann & Co., and affiant answered that he was authorized to accept such process. Mr. Maguire then handed him a copy of the writ of attachment addressed to the marshal, and retired before affiant had an opportunity to read *to* the document. There was no discussion of any kind between affiant and Mr. Maguire as to the property attempted to be attached by the service of the document, nor was there any discussion of the contents of the document. Affiant was at no time requested to deliver to Mr. Maguire, as deputy marshal, or otherwise, any property which he or Wolff, Kirchmann & Co. might have had belonging to respondent in this case. Affiant did not decline to deliver up to the marshal any property, effects or credits named in the said document, or at all. He was not [50] given an opportunity to do this, nor was he at any time advised that he was entitled to or expected to deliver up or pay to

the marshal any property, effects or credits of any kind. No other document was served on him at any time.

That W. R. Carpenter & Co., Ltd., had no property, effects or credits in the hands of Wolff, Kirchmann & Co., at the time of said attempted service of said writ of attachment. That W. R. Carpenter & Co., Ltd., had had issued to it certain shares of stock of Wolff, Kirchmann & Co. which had not been transferred on the books of said Company from W. R. Carpenter & Co., Ltd., to any other person, but which it is claimed were transferred in fact prior to said attachment. That said shares were not in the hands of Wolff, Kirchmann & Co., at the time of the attempted service of said writ.

ALFRED E. WOLFF.

Subscribed and sworn to before me, this 31 day of June, A. D. 1921.

[Seal]

CHARLES EDELMAN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires April 7, 1922.

Receipt of a copy of the within affidavit of Alfred E. Wolff is hereby admitted this 31st day of May, 1921.

ANDROS & HENGSTLER,  
Attorney for Libellant.

[Endorsed]: Filed June 3, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [51]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Saturday the second day of July, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 16,552.

G. H. ATKINS et al.

vs.

W. R. CARPENTER & CO., LTD.

**Order Granting Motion to Vacate Attachment Re  
Wolff, Kirchmann & Co.**

This cause came on regularly this day for hearing of the motion to vacate attachment heretofore issued herein. After hearing proctors for respective parties, the Court ordered that said motion be and the same is hereby granted and that execution thereof be stayed for the period of ten (10) days. [52]



In the Southern Division of the District Court of  
the United States, for the Northern District of  
California, First Division.

IN ADMIRALTY.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,

Libelants,

vs.

W. R. CARPENTER AND CO., LTD., a Corpora-  
tion,

Respondent.

WOLFF, KIRCHMANN & CO., a Corporation,  
Garnishee.

**Notice of Appeal.**

To W. R. Carpenter & Co., Ltd., a Corporation, Re-  
spondent; Wolff Kirchmann & Co., a Corpora-  
tion, Garnishee; and to William Denman, Esq.,  
Their Proctor, and to the Clerk of the District  
Court of the United States for the Northern  
District of California:

You and each of you will please take notice that  
the libelants above named hereby appeal to the next  
United States Circuit Court of Appeals for the Ninth  
Circuit from that certain order of the District  
Court of the United States for the Northern Dis-  
trict of California, made and entered in the above-  
entitled cause on July 2d, 1921, vacating the foreign  
attachment against said garnishee.



Dated: San Francisco, California, July 12th, 1921.

ANDROS & HENGSTLER,  
F. W. DORR,

Proctors for Libelants. [53]

Due service and receipt of a copy of the within notice of appeal is hereby admitted this 12th day of July, 1921.

WILLIAM DENMAN,  
Proctor for Respondent and Garnishee Wolff,  
Kirchmann & Co.

[Endorsed]: Filed July 12, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [54]

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In the Southern Division of the District Court of the  
United States for the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.

WOLFF, KIRCHMANN & CO., LTD., a Corpora-  
tion,  
Garnishee.

**Assignment of Errors.**

Libelants above named assign errors in the pro-  
ceedings and order of the District Court as follows:

## I.

The District Court erred in finding that no notice of the property attached was given to the garnishee above named.

## II.

The District Court erred in finding that Rule 11 of the District Court rules requires that in addition to leaving a copy of the foreign attachment with the garnishee, there must also be left with him "a notice of the property attached."

## III.

The District Court erred in finding that there was no valid service of the attachment upon the garnishee above named.

## IV.

The District Court erred in granting respondent's *motion vacate* the attachment against the above named garnishee. [55]

Dated: July 12th, 1921.

ANDROS & HENGSTLER,  
F. W. DORR,

Proctors for Libelants.

Receipt of a copy of the within assignment or errors is hereby admitted this 12th day of July, 1921.

WILLIAM DENMAN,

Proctor for Respondents and Garnishee, Wolff,  
Kirchmann & Co.

[Endorsed]: Filed July 12, 1921. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [56]

In the Southern Division of the District Court of the  
United States for the Northern District of Cali-  
fornia, First Division.

IN ADMIRALTY—No. 16,552.

G. H. ATKINS, CLIFTON H. KROLL, DAVID  
ATKINS and DAVID GOODALE,  
Libelants,  
vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
Respondent.  
WOLFF, KIRCHMANN & CO., a Corporation,  
Garnishee.

**Stipulation in Regard to Appeal Bond, Etc.**

IT IS HEREBY STIPULATED that the libelants  
above named in order to perfect their appeal from  
the order made and entered herein on the 2d day of  
July, 1921, dismissing the foreign attachment  
against Wolff, Kirchmann & Co., a corporation, gar-  
nishee, may file a single bond on appeal in the sum  
of \$1000.00, with sufficient surety, conditioned as  
provided in the admiralty rules of the United States  
Circuit Court of Appeals for the Ninth Circuit, and  
that said bond shall operate as a bond for costs on  
appeal and also as a bond to stay the execution of  
said order of dismissal during said appeal.

The death of David Goodale, one of the libelants  
herein, having been suggested, it is hereby stipu-  
lated that this action may continue in the names of  
G. H. Atkins, Clifton H. Kroll and David Atkins, the

surviving libelants [57] and surviving copartners of Atkins, Kroll & Company.

Dated July 21st, 1921.

ANDROS & HENGSTLER,

Proctors for Libelants.

WILLIAM DENMAN,

Proctors for Respondent and Garnishee.

It is so ordered.

WM. W. MORROW,

Circuit Judge.

[Endorsed]: Filed July 22, 1921. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [58]

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**Certificate of Clerk U. S. District Court to Apostles on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 58 pages, numbered from 1 to 58, inclusive, contain a full, true, and correct transcript of certain records and proceedings in the case of G. H. Atkins, et al. Libelants, vs. W. R. Carpenter & Co., Ltd., Respondent, No. 16,552, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the prae-cipe for apostles on appeal and the instructions of the proctors for libelants and appellants herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of Twenty-one Dollars and Ninety-five Cents

(\$21.95), and that the same has been paid to me by the proctors for appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of September, A. D. 1921.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Taylor,

Deputy Clerk. [59]

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[Endorsed]: No. 3779. United States Circuit Court of Appeals for the Ninth Circuit. G. H. Atkins, Clifton H. Kroll, David Atkins and David Goodale, Appellants, vs. W. R. Carpenter & Co., Ltd., a Corporation, and Wolff, Kirchmann & Co., a Corporation, Appellees. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed October 1, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 16,552 (District Court).

G. H. ATKINS, CLIFTON H. KROLL and DAVID  
ATKINS,

Appellants,

vs.

W. R. CARPENTER & COMPANY, LTD., a Cor-  
poration, and WOLFF, KIRCHMANN &  
COMPANY, a Corporation,

Appellees.

**Stipulation and Order Extending Time to and In-  
cluding October 10, 1921, to File Record and  
Docket Cause.**

IT IS HEREBY STIPULATED that the appel-  
lants above named may have to and including the  
10th day of October, 1921, within which to file the  
record and docket the above-entitled action upon ap-  
peal in the United States Circuit Court of Appeals  
for the Ninth Circuit.

Dated: September 8th, 1921.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,  
F. W. DORR,

Proctors for Appellants.

WILLIAM DENMAN,  
Proctor for Appellees.

It is so ordered.

W. H. HUNT,  
Judge of the Circuit Court of Appeals of the United  
States in and for the Ninth Circuit.

[Endorsed]: No. 3779. No. 16,552 (District Court). In the United States Circuit Court of Appeals for the Ninth Circuit. G. H. Atkins, Clifton H. Kroll and David Atkins, Appellants, vs. W. R. Carpenter & Co., a Corporation, and Wolff, Kirchmann & Co., a Corporation, Appellees. Stipulation Extending Time to File and Docket on Appeal. Filed Sep. 10, 1921. F. D. Monckton. Refiled Oct. 1, 1921. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 16,552 (District Court).

G. H. ATKINS, CLIFTON H. KROLL and  
DAVID ATKINS,

Appellants,

vs.

W. R. CARPENTER & CO., LTD., a Corporation,  
and WOLFF-KIRCHMANN & CO., a Cor-  
poration,

Appellees.

**Stipulation and Order Extending Time to and In-  
cluding September 10, 1921, to File Record and  
Docket Cause.**

IT IS HEREBY STIPULATED that the appel-  
lants above named may have to and including the



10th day of September, 1921, within which to file the record and docket the above-entitled action upon appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated August 9th, 1921.

ANDROS & HENGSTLER,  
LOUIS T. HENGSTLER,  
F. W. DORR,

Proctors for Appellants.  
WILLIAM DENMAN,  
Proctors for Appellees.

It is so ordered.

W. H. HUNT,  
Judge of the Circuit Court of Appeals of the United  
States in and for the Ninth Circuit.

[Endorsed]: No. 3779. In the United States Circuit Court of Appeals for the Ninth Circuit. *G. H. Atkins et al.*, Appellants, vs. *W. R. Carpenter & Co., Ltd.*, a Corporation, et al., Appellees. Stipulation Extending Time to File and Docket on Appeal. Filed Aug. 9, 1921. F. D. Monckton, Clerk. Refiled Oct. 1, 1921. F. D. Monckton, Clerk.